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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,141	12/30/2003	John D. Mata	127P105USU1	3840

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EXAMINER	
NGUYEN, DINH Q	
ART UNIT	PAPER NUMBER
3752	
MAIL DATE	DELIVERY MODE
01/05/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/749,141	MATA ET AL.	
	Examiner	Art Unit	
	Dinh Q. Nguyen	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 October 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) *6,9,10,16 and 17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7,8 and 11-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5, 7, 8, 11-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-10 of copending Application No. 11/668,768 in view of Miller et al.

Claims 5-10 of the '768 application discloses all the limitations of the claims except for extruding a bead of material on the substrate. However, Miller et al. teaches a method of making an irrigation hose 146 with extruding a bead 110 on the substrate 136 (see figure 4). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of claims 5-10 of the '768 application with a step of extruding a bead of material on the substrate as suggested by Miller et al. Doing so

would provide a way to produce the irrigation at less cost and higher production speeds (see column 1, lines 10-12).

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-4, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrold (2005/0258279) and Harrold et al. (US 6,120,634) in view of the Miller et al.

Harrold (2005/0258279) with support from Harrold et al. (US 6,120,634) discloses all the limitations of the claims except for extruding a bead of material on the substrate. However, Miller et al. teaches a method of making an irrigation hose 146 with extruding a bead 110 on the substrate 136 (see figure 4). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Harold and Harold with a step of extruding a bead of material on the substrate as suggested by Miller et al. Doing so would provide a way to produce the irrigation at less cost and higher production speeds (see column 1, lines 10-12).

With respect to claims 4 and 14, Harrold '279 and Harrold '634 disclose a method with respect to claims 1 and 3 as discussed above. Harrold '634 further discloses a method wherein the second temperature that the substrate is cooled to is

set to a desired temperature by circulating coolant through the cooling rolls. Harrold is silent as to a specific temperature. However, one of ordinary skill in the art would have readily achieved applicant's claimed temperature through routine experimentation. Absent any unexpected results presented by the applicant, it would have been obvious to one of ordinary skill in the art at the time the invention was made to cool the extruded substrate to a temperature below 160 ^{0}F as such a temperature would have been achieved through routine experimentation.

Harrold '279 and Harrold '634 disclose all the limitations of the claims except for a second temperature of less than 160 ^{0}F. However, with absent of any unexpected results presented by the applicant, it would have been obvious to one of ordinary skill in the art at the time the invention was made to cool the extruded substrate to a temperature below 160 ^{0}F as such a temperature would have been achieved through routine experimentation and also is an obvious matter of design choice.

Furthermore, the orders of the claimed process steps do not have support by the specification.

5. Claims 5, 7, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrold (2005/0258279) and Harrold et al. (US 6,120,634) in view of the Miller et al. as applied to claims 1-4,11-14 above, and further in view of Bertolotti et al.

Harrold '279, Harrold '634 and Miller et al. disclose all the limitations of the claims except for a substrate thickness of 0.002 to 0.020 inches. However, Bertolotti et al. teaches a substrate 13 with 0.01 uniform thickness (see column 8, line 36). Therefore, it

would have been obvious to one having ordinary skill in the art to have provided the device of Harrold '279, Harrold '634 and Miller et al. with a substrate thickness of 0.002 to 0.020 inches as suggested by Bertolotti et al. Doing so would provide a flexible and light substrate.

Response to Arguments

6. Applicant's arguments filed October 23, 2009 have been fully considered but they are not persuasive in view of the Miller et al. reference.

7. Applicant's arguments with respect to claims 1-5, 7, 8, 11-15 have been considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dinh Q Nguyen/
Primary Examiner, Art Unit 3752

dqn